

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Amherst Building Company, LLC; c/o Attorney Peter MacConnell

**Date application filed with the Town Clerk:** October 23, 2006

**Nature of request:** A Special Permit to create three flag lots accessed by a common driveway under Section 6.3 of the Zoning Bylaw

**Address:** Leverett Road, across from #207 (Map 3A, Parcel 5, R-O Zoning District)

**Legal notice:** Published on October 25 and November 1, 2006 in the Daily Hampshire Gazette and sent to abutters on October 23, 2006

**Board members:** Tom Simpson, Ted Rising and Al Woodhull

**Submissions:** The petitioner submitted the following:

- A site development plan showing the wetland edges, building envelopes and zoning analysis for the proposed flag lots, drawn by MacLeay Associates, Inc, dated 10/20/06/
- A common driveway plan and centerline profile, drawn by MacLeay Associates, Inc., dated 5/17/06;
- The Order of Conditions issued by the Conservation Commission, issued 10/11/06;
- A Common Driveway Landscape and Utilities Agreement and Easement, dated 10/19/06.

Town staff submitted the following:

- A Form A from the Planning Board subdividing the large parcel into 4 frontage lots and 3 proposed flag lots, dated 10/20/06;
- The Town Engineer's comment on the Form A that the common driveway easement should also involve a utility easement, dated 10/31/06;
- A memo from the staff zoning assistant reviewing the zoning and dimensional requirements for the proposal, dated 11/3/06;
- A memo from the Assistant Fire Chief commenting on access to the proposed lots, water supply and addresses, dated 9/8/06.

**Site Visit:** November 8, 2006

The Board met with Kevin Otto, one of the principal owners of Amherst Building Company (ABC) at the site. The observed the rural character of the surrounding area, the large parcel that ABC wishes to develop, the noticeable slope of the land away from Leverett Road, and what they thought would be the curbcut and location of the shared driveway for the proposal.

Later the Board members individually visited the site again when the applicant staked the actual location of the shared driveway 40 feet to the south of the spot the Board originally observed.

**Public Hearing:** November 9, 2006

Attorney Peter MacConnell represented the applicants at the hearing; Kevin Otto, principal owner, also was present. They gave the following information:

- The ABC owns 17 acres along the west side of Leverett Road;
- The application is for 3 flag lots served by a common driveway;
- The proposed lots are labeled lots #3, 4 and 5 on the submitted site plan;
- The lots are 3.2, 3.8 and 4.2 acres each, much in excess of the 60,000 square feet required for a flag lot in an R-O district;
- All the lots have 40 feet of frontage, with the frontage and access strips of lots 3 and 4 adjacent to one another; the frontage and access strip for lot 5 is located at the northern end of the original parcel; two frontage lots exist between the frontage for lot 5 and the shared driveway for the flag lots:
- The width of each of the 3 building areas exceeds the 300 foot width requirement;
- Each lot meets the required building circle diameter of 150 feet;
- The shared driveway is 16 feet wide and meets the curve radii for emergency vehicles, as required by the Zoning Bylaw;;
- In summary, the composition of the proposed flag lots and shared driveway meet all the flag lot and driveway requirements of the Zoning Bylaw, Sections 6.3 and 7.712 respectively;;
- The proposal for development of the entire parcel has been through the Conservation Commission, and the Order of Conditions were submitted with this application;
- Three acres in the back of the property on the north- westerly corner have been designated as a wood turtle habitat area.

Mr. Simpson asked how the building envelopes were determined for the parcels. Mr. Otto responded that the dotted areas on the submitted map have been determined by the Conservation Commission to represent buildable land. The buffer zone is 100 feet, and the "no build" zone is 30 feet. The dotted areas are all at least 30 feet from the wetlands and/or meet the setback requirements for an R-O zoning district.

The Board examined the driveway profile on the submitted map with the applicant. Section 7.714 of the Bylaw states that common driveways shall not exceed a 5% grade within 50 feet of the intersection of the driveway and the paved section of the road. The applicant explained that in order to maintain a 5% slope, up to 4 feet of fill would have to be added to the first 80 feet of the driveway. The total amount of fill needed for the driveway would be around 580 yards.

Mr. Rising stated that a culvert would be needed for the driveway. The petitioner agreed, and said that the culvert will be discussed with the Town Engineer when the driveway will be built.

There was some confusion about the existence of a ditch was on the west side of Leverett Road and how steep the drop off actually is. Mr. Rising said that his truck almost was stuck in a ditch at the site visit. An abutter, Ed Ferry, 207 Leverett Road, said that he lives directly across the street, and that there is no ditch on the west side. He said that where the ZBA had parked is the location of the cellar hole for a barn that used to exist when the property was a farm. Mr. Rising must have parked partly in the slope to the old cellar hole.

At that point Mr. Woodhull noted that the proposed driveway as shown on the site plan was not where the applicant had met the ZBA. The proposed driveway is approximately 40 feet to the

south, directly across from Mr. Ferry's driveway. The applicant acknowledged the error, and said that the proposed driveway was 40 feet to the south, which is much more level than where the Board had viewed the property.

Mr. Simpson concluded that the hearing should be continued so that the Board could get a better look at the property and where the proposed driveway actually would be located. Mr. Simpson made a motion to continue the hearing until November 30, 2006 at 7:30 p.m.; Mr. Rising seconded the motion, and the vote was unanimous to continue the hearing until November 30<sup>th</sup>.

**Continued Public Hearing:** November 30, 2006

Attorney Peter MacConnell and two principals of the ABC – Blair Whitham and Kevin Otto – attended the hearing and spoke to the petition.

Mr. MacConnell started by saying that the hearing had been continued so that the Board could get a better view of the entrance to the flag lots. He said that he had gone through all the criteria for flag lots and shared driveways previously. He asked if the Board had any questions after their second visit to the site.

Mr. Rising noted that the slope of the driveway is much less steep at the proposed location than where the Board had been earlier and it matches the submitted driveway specifics now.

Mr. MacConnell stated that the Zoning Bylaw allows a 10% grade for a driveway (Section 7.715) and that the first 50 feet from the road not exceed 5 %. The proposed driveway is less than 5% for the first 50 feet and less than 10% overall.

The Board asked about water and sewer for the lots. The applicant responded that the lots will need septic systems and wells, and that the percolation tests for septic systems have been completed for the lots.

Mr. Woodhull asked a series of questions about the wetlands and protection of same. The petitioners gave the following information:

- The land for the turtle sanctuary in the north-west corner of the 17 acre parcel will be permanently marked as such;
- In general, the wetland areas will be flagged during construction and the flags removed after construction is completed and the Conservation Commission is satisfied that their Order of Conditions has been followed;
- All but one (lot 2, a frontage lot) of the deeds from the 7 lots created from the 17 acres will contain clauses describing the locations of the wetlands and restrictions set by the Conservation Commission;
- The common driveway is designed to help prevent drainage problems - it is S-curved, covered with natural gravel/trap rock and has slight swales on each side to drain the water to the north and south; the wetlands that are mainly in the westerly section of the 17 acres should not be compromised.
- The frontage lots will not receive the runoff from the proposed common driveway; the driveway composition and the swales should preclude drainage on to other properties;
- The frontage lots should not contaminate the wetlands in the back of the 17 acres. Their driveways will also be natural gravel and TRC;
- The driveway maintenance agreement for the 3 flag lots, including shared plowing, will be recorded in the Registry of Deeds and part of the deeds for the 3 flag lots.

Mr. Simpson asked about the large trees next to the proposed driveway. Mr. Whitham responded that there are 3 large old maples, but one is dead. One of the other large maples may interfere and they hope to be able to trim back a branch. They will be meeting with the Tree Warden and the Shade Tree Committee about removing some of the smaller trees along Leverett Road in order to improve visibility for the 7 lots.

Mr. Simpson asked for comments from the public. There were none.

Mr. Rising made a motion to close the evidentiary portion of the hearing. Mr. Simpson seconded the motion and the vote was unanimous to close the hearing.

**Public Meeting:**

The Board agreed that the petitioner had met all the requirements of the Zoning Bylaw necessary for flag lots and a shared driveway. They voted unanimously to approve the common driveway, landscape and utilities agreement, the site plan and common driveway plan.

The Board discussed the conditions that would be necessary for granting a Special Permit to the applicant.

**Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because the neighborhood is comprised of predominantly large, single family home lots and other flag lots. Moreover, this proposal plus the frontage lots leave a significant portion of the original 17 acre parcel in open space.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the wetlands and turtle habitat are well marked, the area is proposed for single family homes only, lighting will be downcast and all reasonable measures are taken to minimize the impact on the wetlands in the area.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because the shared driveway will reduce multiple entrances on to the public way, Leverett Road, which does not support a large number of exits onto it.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the shared driveway construction will be monitored by the Town Engineer and the wetlands will be monitored by the Conservation Commission Order of Conditions during construction. After construction, the shared driveway agreement and the wetlands delineation will be part of the deeds for each lot.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because each lot will have its own well and septic system, and all single family residences are required to contract with a refuse/recycling hauler.

10.391 – The proposal protects unique or important natural, historic or scenic features because land has been set aside for a wood turtle habitat in conjunction with the Natural Heritage Foundation analysis of the property. In addition, the relatively small number of homes to be located on the parcel does protect the wetlands district located mainly to the west and will protect the wooded venue of most of the original 17 acre parcel.

10.392 and 10.393 – The proposal provides adequate landscaping, including the screening of adjacent residential uses, because the original parcel is quite large and largely wooded, which will be preserved and provide adequate screening to the surrounding area. In addition, external lighting will be downcast, according to one of the conditions of this permit.

10.395 and 10.397 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because the lots are large, and only single family dwellings are proposed for the lots. There is ample space for both passive and active recreation on the sites.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. The plans have been carefully drawn so as not to interfere with the safety, convenience and welfare of the neighbors or travelers in the area. No crowding in the area will result from the proposal and the overall rural character of the area will be preserved.

### **Public Meeting – Zoning Board Decision**

Mr. Simpson made a motion to APPROVE the applications, with conditions. Mr. Rising seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit under Section 6.3 of the Zoning bylaw to create 3 flag lots accessed by a common driveway on the premises at Leverett Road, across from #207, (Map 3A/Parcel 5, R-O Zoning District), as requested in the application filed by Amherst Building Company, with conditions.

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THOMAS SIMPSON

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EDWARD RISING

\_\_\_\_\_  
ALBERT WOODHULL

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2006 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2006.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2006  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2006,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit under Section 6.3 of the Zoning bylaw to create 3 flag lots accessed by a common driveway on the premises at Leverett Road, across from #207, (Map 3A/Parcel 5, R-O Zoning District), as requested in the application filed by Amherst Building Company, subject to the following conditions:

1. The flag lots shall be configured as shown on the site plan drawn by MacLeay Associates, dated 10/20/06 and approved at a public meeting of the Board on November 30, 2006.
2. Development shall be restricted to single family dwellings.
3. The driveway shall be constructed as shown on the driveway plan drawn by MacLeay Associates, dated 5/17/06 and approved at a public meeting of the Board on November 30, 2006.
4. The driveway and landscaping shall be maintained as described in the Common Driveway Agreement approved by the Board at a public meeting on November 30, 2006.
5. The final location and footprint of the houses and any plantings associated with said construction shall be submitted to the Board for consideration at a public meeting prior to issuance of a building permit.
6. All external lighting shall be downcast.
7. This Special Permit is subject to Section 14 of the Zoning Bylaw, Phased Growth. Development authorization is available as on January, 2007.

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TOM SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE